Supreme Court, U.S.
FILED

941260 JAN 23 1995

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

SONNY BOY WEBB

Petitioner,

vs.

ENVIRONMENTAL PROTECTION AGENCY; WILLIAM K. REILLY, ADMINISTRATOR, OFFICE OF ADMINISTRATION AND RESOURCES MANAGEMENT, RTP, N.C.; WILLIS E. GREENSTREET, DIRECTOR,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Counsel for Petitioner

43 pp

QUESTIONS PRESENTED

1) Did involved circuit court and district court both err from rulings of this Court and other courts below by dismissing this lawsuit without a judicial hearing where both discriminatory acts of unfair labor management practice and acts of reprisal/retaliation are legally litigated, contended, and supported?
2) Should the Federal Common Law be considered and applied to this case matters since the scope of this suit circumstance is greater than each cited authority circumstance affirmed and applied by circuit court to support case dismissal?
3) Is the involved United States citizen and federal employee denied certain constitutional rights given by the fifth, seventh and/or fourteen amendments to the Constitution of the United States and denied a legal right to a hearing where parties contended evidence and facts are in great controversy?
4) Whether circuit court reviewed district court's opinion of no genuine issues of unfair labor management practices and acts of reprisal/retaliation under the "clearly erroneous" standard of the Federal Rules of Civil Procedure?

5) Did district court err in its denial of plaintiff's motion to squash subpoenas and deposition notices when both an improper and unreasonable time notices were given by defendants?

6) Whether district court erred in granting defendants' motion to compel depositioned testimonies from plaintiff's witnesses and in summoning same witnesses and plaintiff before the court during the compelled depositions taken process?

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No. _____

IN THE

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OCTOBER TERM, 1994

SONNY BOY WEBB

Petitioner,

vs.

ENVIRONMENTAL PROTECTION AGENCY; WILLIAM K. REILLY, ADMINISTRATOR, OFFICE OF ADMINISTRATION AND RESOURCES MANAGEMENT, RTP, N.C.; WILLIS E. GREENSTREET, DIRECTOR,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, Sonny Boy Webb, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States of Appeals for the Fourth Circuit that affirmed a dismissal of both claims of unfair labor management practices and acts of reprisal/retaliation of discrimination by Respondents in this case without a juridical hearing, being in conflict with rulings from this

Court and other courts below on same matter issue(s), where breaches of "good faith" collective bargaining agreement and an estoppel of the due process of law and unfair union representation have occurred, affidavit/declaration statements are accepted/considered by the court over legal depositions and supporting affidavits/evidence materials, and where the dismissed claims of reprisal/retaliation and the conflict caused by case dismissal are both not addressed.

OPINIONS BELOW

The unpublished opinion of the Court of Appeals for the Fourth Circuit appears in Appendix A to this Petition. The unpublished opinion of the District Court for the Middle District of North Carolina appears in Appendix B to this Petition. The unpublished ruling by Order of the Magistrate, affirmed/adopted by District Court for the Middle District of North Carolina, appears in Appendix C.

JURISDICTION

The petitioner seeks review in The Supreme Court of the United States by writ of certiorari of the Opinion decided on September 23, 1994 by the United States Court of Appeals For The Fourth Circuit. A timely Petition for Rehearing was filed on October 7, 1994. The Court of Appeals' denial of the Petition for

Rehearing was issued on October 25, 1994 and is set forth in Appendix D. This Court's jurisdiction is invoked under Title 28, U.S.C. Section 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments V, VII, and XIV [Section 1] to the United States Constitution are set forth in Appendix E.

Article 6, sections 1 [first three sentences] and 3, Article 31, 2 section 5, Article 32, section 1, Article 34, section 5, and Article 37, sections 3 and 4 to the Collective Bargaining Agreement Between The American Federation of Government Employees and the United States Environmental Protection Agency are set forth in Appendix F.

STATEMENT OF THE CASE

The United States District Court, Middle District of North Carolina, Durham Division, had jurisdiction pursuant to Title 28 § 1331, §§ 2201 and 2202, Civil Right Act of 1964 as amended, 42 U. S. C. § 2000e et. seq., and the Federal Service Labor-Management Relations Act (FSLMRA).

On February 7, 1992, Petitioner, pro se, filed complaint of this case action in the United States District Court, Middle of North Carolina, after first pursuing the grievance procedure process at

the Environmental Protection Agency (EPA), Office of Administration and Resources Management (OARM), Research Triangle Park (RTP), North Carolina. In October, 1991, Petitioner contacted Mr. Robert Davis [President of American Federation of Government Employees (AFGE) Local 3347 and an EPA employee under the direction and leadership of Mr. Willis E. Greenstreet (Director of EPA/OARM, RTP, N.C.)] and reported Respondents' Mr. Stacy Blackman's breach of an oral agreement and the Collective Bargaining Agreement (CBA) between AFGE and EPA. In summary, Petitioner's grievance allegation, in accordance with the oral promise and CBA, was that Petitioner be compensated at the GS-9 level for doing Respondents' Mr. Garland Cates EPA job [GS-11] after being appointed/assigned by Respondents' Stacy Blackman, from period April 5, 1991 through October 1, 1991, because of Garland Cates' absence/recovery from work due to on-the-job injuries sustained in an accident. Even after Respondents' Stacy Blackman failed to respond in accordance with Article 31, section 6, CBA between AFGE and EPA, Mr. Robert Davis pursued Petitioner's grievance up to the third step of the grievance procedure and, on February 5, 1992, withdrew Union representation for Petitioner after Respondents' Mr. Willis Greenstreet closed the grievance process by letter of Memorandum dated January 10, 1992, and wouldn't allow or process Petitioner's grievance any further.

Petitioner's complaint dated Feb. 7, 1992, filed as related to civil action C-89-18-D decided in Webb v. EPA No. 90-2106 (4th Cir., 1990) and Webb v. EPA, No. 91-2540 (4th Cir., 1992), sought back pay, a promotion to GS-9 with job potential to GS-11, other relative benefits , etc. — a demand monetary value of $15,000 (plus) for Respondents' act of unfair management practice of discrimination. On July 10, 1993, Petitioner amended complaint filed Feb. 7, 1992 with discriminatory acts of reprisal/retaliation, after first pursuing the grievance process at EPA/OARM, RTP, N.C. In March, 1992, again Petitioner contacted Mr. Robert Davis and reported Respondents' Mr. Stacy Blackman and Mr. David Westmoreland discriminatory acts of reprisal/retaliation against Petitioner; reported matters were pursued through the grievance process by Mr. Robert Davis. Consequently, during the informal stage, Respondents' Stacy Blackman and David Westmoreland failed to comply with Article 31, section 6 - another breach of the CBA between AFGE and EPA by the Respondents. On April 1, 1992, Robert Davis referred all grieved matters in writing to Mr. Charles Foster [Supervisor of Blackman and Westmoreland], later to Respondents' Mr. Willis Greenstreet [Supervisor of Foster]; however, after receiving no consideration of matters grieved from the two named Respondents, Mr. Robert Davis ended Union representation for

the Petitioner on May 19, 1992 and placed matters back with Petitioner.

Petitioner's amended complaint sought all claims in original complaint plus relief of reprisal and retaliations, matter be resolved and rescind all letters/memorandum [Letter of Caution and Letter of Reprimand] executed against Petitioner, right to annual leave requested on March 2, 1992, and any other relative benefit for all alleged false accusations and attacks by Respondents upon Petitioner and Respondents' denial of Petitioner's statutory right to annual leave and breaches of the CBA.

Discovery herein this case was established and ordered by District Court to be completed on or before September 20, 1992. Beginning on July 30, 1992 and ending September 9, 1992, Respondents took deposition of Petitioner Sonny B. Webb, and beginning and ending on July 30, 1992, Petitioner took deposition of Respondents Willis E. Greenstreet [filed in district court October 19, 1992]. Beginning on September 15, 1992 and ending in June, 1993, Respondents took depositions of Petitioner's witnesses James B. Samuel, Jr., Glenda Alston, and William Johnson; same three witnesses and Sonny B. Webb were summoned on March 24, 1993 before the court during the process of taking these depositions. [Taking depositions of James B. Samuel, Jr., Glenda Alston, and William Johnson by Respondents

were continued until March 24, 1993 because of the U.S. Magistrate Judge's Order dated February 9, 1993 which Petitioner took objections thereto and filed motion to stay on February 18, 1993; but was denied by U.S. Magistrate Judge's Order dated/entered March 25, 1993, which was accepted and affirmed by district court's Order dated March 30, 1993].

On July 16, 1993, Petitioner filed motion to suppress the depositions of James Samuel, Jr., Glenda Alston, and William Johnson. On August 9, 1993, Respondents filed response to Petitioner's motion to suppress. District court never responded to Petitioner's motion to suppress.

On August 18, 1993, pursuant to Rule 56, Federal Rule of Civil Procedure, Respondents filed motion for summary judgment and on August 27, 1993, Petitioner filed motion for an extension of time to respond to Respondents' motion for summary judgment and to obtain affidavits. By Order, September 1, 1993, district court granted Petitioner an extension of time to file answer, depositions [obtained], materials, etc. to Respondents' motion for summary judgment.

Depositions of Paul Harris, Jr., Richard Foster, Randy Brady, Stacy Blackman, Garland Cates, and Charles Foster were taken by Petitioner on the 16th and 17th days of September, 1993. And on October 14, 1993, Petitioner filed response to Respondents' motion for summary judgment and filed a motion for an extension

of time for filing original depositions of same said/named involved persons above — Petitioner's motion was agreed thereto by Respondents. Also, in accordance with order dated Sept. 1, 1993, Petitioner filed signed certified copies of the six depositions aforementioned above.

On October 28, 1993, district court entered Judgment/Order with opinion that dismissed, with prejudice, Petitioner's law suit by deciding/addressing a lesser issue than the alleged and contended primary issue/circumstance of the case when court accepted Respondents one affidavit and two declaration statements over legal depositional evidence and affidavits with supporting materials/documents or records in granting motion for summary judgment. From district court' s Judgment/Order dated/entered October 28, 1993, Petitioner Sonny B. Webb gave "Notice of Appeal" on November 24, 1993 to United States Court of Appeals for the Fourth Circuit, according to Rule 4(a), Fed. R. Civ. P.

Petitioner's informal brief was filed, which requested to reverse court's Judgment/Order dated October 28, 1993; consequently, on September 23, 1994 circuit court agreed to and affirmed district court's opinion.

On October 7, 1994, Petitioner Sonny B. Webb filed petition for rehearing in circuit court, directing court's attention to the overlooked or misapprehended case material of fact or law and to the unaddressed conflict of the circuit court's opinion with rulings

from this Court and other courts below. However, in spite of Petitioner's effort and argument contented, the Petition for Rehearing was denied by circuit court on October 25, 1994.

Petitioner is of the opinion that, because of case's activities herein and the opinion/denials issued to uphold such, there are violations of Petitioner's constitutional and civil rights of United States, and that the opinions of both the district and circuit courts are in conflict with rulings of this Court and other courts below, as addressed/presented below by Petitioner's argument reasons for granting the writ.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for reasons as: This Petition presents issues showing that the circuit court's opinion is in conflict with previous decisions of this Court and other courts below; issues showing violations by Respondents and district court of Petitioner's constitutional and civil rights of the United States; and an issue concerning a federal law question once applied by this Court in another similar case/circumstance, but not considered/implemented by neither the district or circuit courts herein.

As in Webb v. EPA, No. 90-2106 (4th Cir., 1990) and Webb v. EPA, No. 91-2540 (4th Cir., 1992), district court erred and misapplied and/or confused the law [by its "rationale" being that

the exhaustion of administrative remedies is a jurisdictional prerequisite to the maintenance of a judicial action][1] to dismiss entire case that was finally upheld by Court of Appeals for the Fourth Circuit, the same district court and circuit court have committed similar errors/confusions by dismissing Petitioner's suit. Petitioner's opinion is that District court misapprehended and misstated Petitioner's alleged, litigated, and contended case/circumstance, therefore, the wrong law/authorities were applied to dismiss case on Respondents' contended grounds - including failure to exhaust administrative remedies.

In Bowen v. United States Postal Service et al., 459 U.S. 212 (1983) and Vaca v. Sipes, 386 U.S. 171 (1967), the issue whether an employee who failed to exhaust the grievance procedure prescribed in the Bargaining agreement could suit for a breach of that agreement has been resolved. It was held that "an employee's failure to exhaust the contracted grievance would bar his suit except when he could show that the union's breach of its duty of fair representation had prevented him from exhausting those remedies." While the Union herein this case discriminated against

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[1]District court's rationale was in conflict with the ruling of the Supreme Court of the United States. This Court held that compliance with the filing requirements of EEOC "is not a jurisdictional prerequisite to suit in Federal Court but a

the Petitioner and breached its duty of fair representation, Respondents violated Article 31, section 6, Article 37 sections 3 and 4 of the CBA between AFGE and EPA, and also closed the grievance procedure process against the Petitioner. The CBA between AFGE and EPA is an enforceable agreement. As stated in Bowen above, it [CBA] is an agreement creating relationship and interests under the federal common law of labor policy." However, Petitioner's amended complaint alleged and sought greater case circumstance/relief than the established terms and conditions of the CBA with EPA.

By Respondents failure to comply with Article 34, section 5 and Article 37, sections 3 and 4, CBA between AFGE and EPA, Petitioner [Inventory Management Specialist, GS-2010-7] was left officially appointed/assigned by Respondents' Mr. Stacy Blackman to EPA job of Respondents' Mr Garland Cates [Supervisory Inventory Management Specialist, GS-2010-11] until Oct. 1, 1991. With this case circumstance and facts and addressed issue in paragraph right above, according to Court's ruling in Clayton v. International Union, United Automobile, Aerospace, &

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requirement that like a statute of limitation is subject to waiving, estoppel and equitable tolling." Baldwin County Welcome Center v. Brown, 466 U.S. 147, 104, S. Ct. 1723, 80 L. Ed.2d 196 (1984); Zipes v. Transworld Airlines, Inc., 455 U.S. 385, 393, 102 S. Ct. 1127 71 L. Ed.2d 234 (1982).

Agricultural Implement Workers of America, et al., 451 U.S. 679, 696 (1981), Petitioner's failure to exhaust administrative remedies should be excused: Petitioner should be allowed to pursue judicial relief. See Bassett v. Teamsters Local 705, 120 LRRM 2775-2778 (7th Cir., 1985). Petitioner's appointment/occupancy of the EPA job GS-2010-11 is supported with four depositional statements[2] and affidavits/materials.

District Court used Ganse v. United States, 376 F.2d 900, 902 (Cl. Ct. 1967); Brech v. U.S. Immigration & Naturalization Service, 362 F. Supp. 914, 917 (S.D.N.Y. 1973) to support a dismissal of the case, addressed not the claim of reprisal/retaliations at all. However, there is a vast difference between these two cases' circumstances, and Petitioner's alleged, litigated, and contended case circumstance, and the reprisal/retaliations' claim should not have been ignored and dismissed. According to Petitioner's defense and Rules 8(e) and (f), 9(d), Fed. R. Civ. P., Petitioner's suit is contended properly and does exceed each circumstance in the above two cited authorities by district court; therefore, the federal Common Law should apply. By wrong law applied and/or law misapplied, Petitioner's right to a hearing according to Rule 56(d) and (e), Fed.

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[2]James Samuel, Jr., Glenda Alston, William Johnson, and Sonny B. Webb.

R. Civ. P., is violated, a violation of 5th and 7th amendments to the Constitution of the United States.

According to the Federal Service Labor-Management Relation Act (FSLMRA), restraining the exercise of an employee's rights under the act, disciplinary or discrimination against an employee for filing a grievance complaint is prohibited. Petitioner' s alleged claims of reprisal/retaliation acts by Respondents Stacy Black and David Westmoreland started on February 28, 1992 [less than a month after Petitioner's suit was filed in district court] and continued through March 10, 1992, etc. Respondents Mr. stacy Blackman caused a major job duty conflict with the Petitioner in demanding Petitioner to complete another available co-worker's major job duty, claimed that it was a two hour task, needed to be completed for Respondents' Garland Cates for the close date quarterly report of inventories [is due]. From Respondents' Stacy Blackman's deposition [p. 69, L. 1-7; p. 130, L. 10-16½] taken on September 17, 1993:

Q: You were going on this — on the statement that Williford said it took an hour to complete, did you not?

A: I believe Mrs. Williford said it should have taken no more than two hours — is what she said.

Q: No more than two hours to complete?

A: Right.

Q: You can go ahead and answer it.

A: Okay. It was — as I had stated earlier, Millie Williford had been called out of town to attend her sick — to be with her sick sister, and we were getting close to a date that we had to get these inventories completed, and I went ahead and assigned this one to — to Sonny.

And from Respondents Mr. Garland Cates' deposition [p. 27, L. 23-25; p. 28, L. 9-13; p. 30, L. 1-8] taken on Sept. 17, 1993;

Q: That all inventories must be completed within the fiscal year?

A: That is correct.

Q: Do you have any quarterly — I mean, do you have any quarterly schedules, which is every three months, meeting your requirements?

A: Loosely we try to work to a quarterly schedule.

Q: And your first quarter would begin with what month, Mr. Cates?

A: Well, since the fiscal year begins in October, then the first quarter would end approximately at the end of January.

Q: End of January. And when would your second quarter begin?

A: Three months later.

From these two above testimony statements, the quarterly report of inventories was not even required in March 1992. And when Respondents Stacy Blackman denied the Petitioner annual leave because of transportation trouble on the morning of March 2, 1992, Petitioner was denied a statutory right to Annual leave

without Mr. Stacy Blackman having a Justified reason, which is a violation of Article 6, Sections 1 and 3 of CBA between AFGE and EPA. And on March 4, 1992, Respondents Stacy Blackman harassed Petitioner, issued Petitioner a "Letter of Citation" that contained a pre-determined decision to continue reprisal. On March 10, 1992, Respondents David Westmoreland retaliated against Petitioner with an issued "Letter of Reprimand" that falsely accused and charged Petitioner with disobeying verbal instruction and order [do not turn out the light in restroom], etc.

When alleged acts of reprisal/retaliations were pursued by Mr. Robert Davis in the informal stage of the grievance process, Respondents Mr. Stacy Blackman refused to meet with Mr. Davis and Mr. David Westmoreland refused to meet with Mr. Davis unless David Westmoreland was accompanied by Respondents Mr. George Taylor. Per Mr. Davis' s letter [dated April 14, 1992) to Respondents Mr. Charles Foster, results of the informal meeting were:

> "On March 18, 1992, I met with Mr. Westmoreland and Mr. Taylor, Mr. Westmoreland stated in his letter he had received complaints from various members of the branch, however, when I asked who made the complaints, he could not remember who made the complaints, except conveniently, a supervisor named Mr. Allen P. Baker, Jr. Chief, Contract Property Section.
>
> I asked Mr. Westmoreland if he saw the Grievant remove the light in the bathroom, Mr. Westmoreland's reply was 'No.'

He stated that the Grievant stayed in the bathroom 10-15 minutes, but when asked the time entered and time exited, Mr. Westmoreland, did not know.

When asked for reconsideration of the Letter of Reprimand, Mr. Westmoreland, reply was, 'no intention of reconsideration.'

When advised that we were at an informal state and asked again, Mr. Westmoreland, reply was 'I may reconsider, if Sonny would give him an explanation as to why he use the bathroom with the light out.'"

Mr. Robert Davis presented these grieved matters, after Respondents Charles Foster denied the Petitioner the right to file a grievance in Step 1, to Respondents Mr. Willis Greenstreet before being denied consideration also toward matters grieved; therefore, Mr. Robert Davis withdrew union representation and returned grieved matters back to the Petitioner. When this happened, according to Article 32, Section 1 CBA between AFCE and EPA, Petitioner was barred from going further through the grievance procedure of EPA-RTP, NC.

On October 28, 1993, in spite of the above addressed incidents, records and Petitioner's other affidavit, materials, documents/records evidence presented, district court dismissed [without addressing] any claims and relief sought for Respondents' acts of reprisal/retaliation. Dismissal of all Petitioner's claims and relief sought was granted on all

Respondent's contended grounds — including failure to exhaust administrative remedies. Petitioner's response and evidence filed in district court show that Respondents' grounds/reasons to dismiss are pretext for discrimination based on reprisal/retaliation acts and that Petitioner's participation with the union is a legal and protected operation/activity to charge Respondents with unlawful acts. Because of the above and the rulings in the cited cases below, the district court with the circuit court, erred in dismissing these claims and relief sought for Respondents' acts of reprisal/retaliation of discrimination. See Walters v. Harvard College, et al, 120 LRRM 2685-2688 (August, 1985); Price v. Cannon Mills Co., 607 F. Supp. 1146, 39708 (M.D.N.C. 1985); Novotany v. Great Am Fed. Sav. & Loan Ass'n, 539 F. Supp. 437, 28, FEP 1796 (W.D. Pa. 1982); Sims v. Mme. Paulette Dry Cleaners, 580 F. Supp. 593, 34 FEP 305 (S.D.N.Y. 1984); Barrett v. Omaha Nat'l Bank, 584 F. Supp. 22, 35 FEP 585 (D. Neb. 1983), aff'd, 726 F. 2d 424, 35 FEP 593 (8th Cir. 1984).

Therefore by Petitioner's claims/relief sought for Respondents' acts of reprisal/retaliation being dismissed without the Donnell Douglas Test from McDonnell Douglas Corp v. Green, 411 U.S. 792, 5 FEP 965 (1973) being applied and by the prejudiced practices of the courts below to prevent the show of Petitioner's evidence to prove Respondents contended reasons are

pretext for discriminatory acts of reprisal/retaliation, the course of justice is blocked without being justified.

In Respondents' acts of reprisal/retaliation, Petitioner is charged with willfully violating an order/instructions, etc. from authorities, denied a statutory right, deprived of liberties and wages, found guilty, punished, etc. without due process of law and its equal protection. Thus, in Petitioner' s opinion, violations of amendment V and/or amendment XIV [and amendment VII also if case is a question of Federal Common Law] to the Constitution of the United States have occured. Also, Petitioner' s good name and integrity, and job reputation with EPA have been damaged by the unproven and unjustified acts of reprisal/retaliation by the Respondents. Up to these alleged acts by Respondents toward Petitioner, as an EPA employee, Petitioner maintained a good name, an employment record as a faithful, dependable, and trustworthy worker and has complied with the law and EPA authorities in fulfilling job requirements, even during Petitioner's alleged previous complaints against the Respondents. Therefore, by Respondents executing these acts of reprisal/retaliation toward Petitioner and then stopped and denied the Petitioner the due process of law to contest such, this is nothing but clearly determined/planned acts to attack Petitioner for carrying this case matter outside of Respondents' authorities and control. So by Petitioner's suit being dismissed and not dealt with forthrightly,

great injustice has been done and errors have been committed by the involved courts below this Court.

This Court should grant certiorari here to decide the question of federal law raised herein, to clear up or resolve the conflict between this Court and courts below created by the district court's and Fourth Circuit's opinions in this matter, and to allow justice in accordance to the procedure and practices of law.

CONCLUSION

For all the reasons set forth above, a writ of certiorari should issue to review the judgments and opinions of the courts below in this matter.

DATED: January 20, 1995

Respectfully submitted,

Sonny B. Webb

SONNY B. WEBB, PRO SE

Counsel for Petitioner

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 94-1059

SONNY BOY WEBB,

Plaintiff - Appellant,

versus

ENVIRONMENTAL PROTECTION AGENCY; WILLIAM K. REILLY, Administrator, Office of Administration and Resources Management, RTP, N.C.; WILLIE E. GREENSTREET, Director,

Defendants - Appellees.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. Richard C. Erwin, Senior District Judge. (CA-92-72-1)

Submitted: August 30, 1994 Decided: September 23, 1994

Before HALL and MURNAGHAN, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Sonny Boy Webb, Appellant Pro Se. Gill Paul Beck, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

APPENDIX A

PER CURIAM:

Appellant appeals from the district court's order granting summary judgment for Appellee in Appellant's action seeking a job promotion. Our review of the record and the district court' s opinion discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court.* Webb v. EPA, No. CA-92-72-1 (M.D.N.C. Oct. 28, 1993). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

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*The district court did not expressly address Appellant's retaliation claim. Because Appellee presented a legitimate reason for the incidents about which Appellant complains, we find that, even if he made a prima facie showing of retaliation, Appellant was not entitled to relief on this claim. Cf. Texas Dep' t of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981).

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DURHAM, DIVISION

ENTERED ON DOC R.55(a)
OCT 28, 1993

SONNY B. WEBB,	:	FILED
	:	OCT 28, 1993
Plaintiff,	:	
	:	
v.	:	1:92CV00072
	:	
ENVIRONMENTAL PROTECTION AGENCY, WILLIAM K. REILLY, ADMINISTRATOR, OFFICE OF ADMINISTRATION AND MANAGEMENT, RTP. N.C., WILLIS B. GREENSTREET, DIRECTOR,	:	
Defendants	:	

JUDGEMENT

In keeping with the order filed herewith, IT IS ORDERED, ADJUDGED, AND DECREED that the defendant's motion for summary judgement be allowed and that the plaintiff's case be dismissed with prejudice. Each party shall pay its own costs.

s/Richard C. Erwin

Senior United States District Judge

October 28, 1993

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DURHAM, DIVISION

SONNY B. WEBB,	:	FILED
	:	OCT 28, 1993
Plaintiff,	:	
	:	
v.	:	1:92CV00072
	:	
ENVIRONMENTAL PROTECTION AGENCY, WILLIAM K. REILLY, ADMINISTRATOR, OFFICE OF ADMINISTRATION AND MANAGE MENT, RTP. N.C., WILLIS B. GREENSTREET, DIRECTOR,	:	
Defendants	:	

ORDER

Plaintiff Sonny B. Webb contends that Mr. Stacy Blackman of the Property and Supply Management Branch of the Environmental Protection Agency, appointed him to perform the duties of Mr. Garland Cates, an injured co-worker. Plaintiff alleges that Mr. Blackman told him he would be paid at the GS-9 level as compensation for his additional duties. Plaintiff s allegation that Stacy Blackman promoted him does not create a genuine issue of material fact since Mr. Blackman had no actual authority to promote the plaintiff. The plaintiff was given additional duties; however, it

is undisputed that plaintiff was not legally appointed to the position of GS-9. It is undisputed that the plaintiff was not appointed to the level of GS-9; therefore, there is no genuine issue of material fact with respect to the plaintiff's appropriate level.

Plaintiff requests that he be retroactively promoted to GS-9. He claims that equity would warrant additional compensation for his new responsibilities. Plaintiff is not entitled to a retroactive promotion to GS-9 because of his additional job requirements. "It is a well-settled principle of law that Federal Government employees are entitled only to the salaries of positions to which they are appointed, regardless of the duties they actually performed." Ganse v. United States, 376 F.2d 900, 902 (Cl. Ct. 1967); Brech v. U.S. Immigration & Naturalization Service, 362 F. Supp. 914, 917 (S.D.N.Y. 1973). Plaintiff was never appointed to the GS-9 level; therefore, he is not entitled to retroactive compensation. Additionally, the record does not reveal any circumstances that would authorize this court to make any changes to the plaintiff's work record.

Having considered both the legal and factual issues in this case, the court is of the opinion that there are no genuine issues of material fact; therefore, the defendant's motion for summary judgement is GRANTED.

s/Richard C. Erwin
Senior United States District
Judge

October 28, 1993

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DURHAM, DIVISION

SONNY B. WEBB,	)	FILED
	)	FEB. 9, 1993
Plaintiff,	)	
	)	
v.	)	1:92CV00072
	)	
ENVIRONMENTAL PROTECTION AGENCY, WILLIAM K. REILLY, ADMINISTRATOR, OFFICE OF ADMINISTRATION AND MANAGEMENT, RTP. N.C., WILLIS E. GREENSTREET, DIRECTOR,	)	
Defendants.	)	

O-R-D-E-R

This matter comes before the court on three motions: Plaintiff Sonny Boy Webb's motion for an "injuction;" Webb's motion to strike; and Defendants' motion to compel. Webb (proceeding pro se in this action) is an employee of the Environmental Protection Agency who works at the agency's Office of Administration and Resources Management (hereafter, "OARM") in Research Triangle Park, North Carolina. He alleges in his complaint that he is due back pay for time he spent filling the position of supervisor

while the actual supervisor was out on sick leave (due to a work-related injury).

All three of these motions stem from events on or about September 15, 1992, when the Defendants attempted to take the depositions of three persons who had filed affidavits in support of Webb: William Johnson, Glenda Alston, and James Samuel, Jr. During these depositions Webb frequently objected to questions on the grounds of "privilege, personal, confidential, privacy, etc." (Plaintiff's Response to Defendants' Motion to Compel at 1.) The questions Webb objective to generally related to the witnesses' basis of the facts alleged in their affidavits.

Following the depositions, Webb alleges that he was walking down the street away from the courthouse when he realized he was being followed by Stacy Blackman, one of his supervisors at OARM. Webb claims that Blackman harassed him and only left him alone after he (Webb) called the police. Based on this event, Webb has filed a motion for an "injunction" to prohibit the Defendants from using Stacy Blackman as a witness and/or from using any evidence derived from him. He has also filed a motion to strike the Defendants' response to his motion for an injunction, on the grounds that the copy of the response sent to him was not signed (making it illegal, he says), and because the response does not refute his allegations regarding Blackman's misconduct.

Neither of Webb's motions is meritorious. Regarding his motion for an injunction, such a motion is not a method by which evidence may be excluded. Blackman is a witness to the events central to Webb's claim, and as such has relevant testimony to give on those matters. If Webb believes that his testimony at trial is irrelevant or prejudicial, he may object to it pursuant to the Federal Rules of Evidence. Webb's motion for an "injunction" is DENIED.

Regarding the motion to strike, the copy of the pleading filed with the court, which was signed, comports with the requirements of Rule 11 of the Federal Rules of Civil Procedure and with the local rules of this court. Rule 11 does not require a pleading to be dated, nor does it require that copies of pleadings sent to other parties be signed. Frederick v. Koziol, 130 F.R.D. 620, 622 (E.D. Va. 1990). Furthermore, it is not necessary for a response to factually refute the allegations in a motion when the response is based on procedural grounds; and in any event, since Webb's motion to strike is meritless, it does not matter that the Defendants' response did not refute it. Webb's motion to strike is DENIED.

The Defendants' motion to compel is based upon the behavior of Webb and his witnesses at the depositions. During all of the depositions Webb repeatedly objected to questions which generally related to the witnesses' basis for the facts alleged in their affidavits (i.e., that Webb was acting as their supervisor).

(See Defendants' Motion to Compel at 2-17 for examples.) In short, the questions went to matters at the heart of this case and to matters of impeachment. Webb's objections were founded on his belief that they were protected because they were confidential, personal, private, and privileged.

However, these matters were not confidential or privileged on any recognized legal ground. First, there is no general privilege regarding communications between coworkers, and Webb has not shown that the questions violated some other, established, privilege. Second, the questions dealt with matters which were unquestionably relevant to this case (and/or intended to lead to relevant admissible evidence), and therefore there was no basis for objecting to them. Market v. Union Fidelity Life Insurance Co., 125 F.R.D. 121, 124 (M.D.N.C. 1989), see also McDonald v. Prowdley, 38 F.R.D. 1, 3 (W.D. Mich. 1965) (information to be used for impeachment purposes is relevant for purposes of discovery). Accordingly, Webb's objections to the questions were baseless. Defendants' motion to compel is GRANTED; Defendant may reconvene the depositions of William Johnson, Glenda Alston, and James Samuel, Jr., and those witnesses shall answer the questions previously objected to and any other questions intended to elicit discoverable information. See Ralston Purina Co. v. McFarland, 550 F.2d 967 (4th Cir. 1977). Defendant shall serve a copy of this order on the witnesses along

with the subpoena. The witnesses are advised that any repeat of their failure to answer deposition questions, where no recognized privilege exists, will cause them to be summoned to appear before the court.

s/P. Trevor Sharp, U.S.
Magistrate Judge

February 9, 1993

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

October 25, 1994

No. 94-1059

CA-92-72-1

SONNY BOY WEBB

Plaintiff - Appellant

v.

ENVIRONMENTAL PROTECTION AGENCY; WILLIAM K. REILLY, Administrator, Office of Administration and Resources Management, RTP, N.C.; WILLIE E. GREENSTREET, Director

Defendants - Appellees

ORDER

Appellant has filed a petition for rehearing.

The Court denies the petition for rehearing.

For the Court,

/s/ Bert M. Montague

CLERK

APPENDIX D

AMENDMENT V, AMENDMENT VII, AND AMENDMENT XIV [SECTION 1] TO THE UNITED STATES CONSTITUTION

AMENDMENT V

No person shall be held to answer for a capital, or other wise infamous crime, unless on a presentment or indictment of a Grand Jury, except incases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

APPENDIX E

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unites States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE 6, SECTIONS 1 [First three sentences], AND 3, ARTICLE 31, SECTION 6, ARTICLE 32, SECTION 1, ARTICLE 34, SECTION 5, AND ARTICLE 37, SECTIONS 3 AND 4 TO COLLECTIVE BARGAINING AGREEMENT BETWEEN THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

ARTICLE 6

LEAVE

Section 1. Accrued annual leave is a statutory right of employees. However, the use of accrued leave is subject to approval of the employees' supervisors. Subject to exigencies in the Agency's operations, employees will be given the opportunity to use their accrued annual leave during the leave year of accrual.

Section 3. Requests for emergency unscheduled annual leave need not be submitted in advance. Employees will cause his/her supervisor to be notified of their request as soon as possible but not later than two (2) hours after the start of their regularly scheduled tour of duty.

APPENDIX F

ARTICLE 31

GRIEVANCE PROCEDURE

Section 6. An employee complaint will first be taken up by the concerned employee or the employee's union representative if any, with the employee's immediate supervisor or appropriate management official in an attempt to settle the matter in an informal manner. The supervisor or the appropriate management official will reply to the employee or representative, normally within three (3) working days, but not more than five (5) working days. If the matter is not resolved, the employee may file a grievance in accordance with the procedure described below.

ARTICLE 32

ARBITRATION

Section 1. If a grievance processed under this Agreement is not resolved, such grievance may be submitted to arbitration by either the EMPLOYER or the UNION within thirty (30) days after issuance of the final decision.

ARTICLE 34

REASSIGNMENT

Section 5. Except where the employee' s immediate organization's budget would preclude such an action, an employee temporarily assigned to a classified position at a higher level for

more than 30 calendar days will receive a temporary promotion effective the 31st day of the assignment. The employee must meet any qualification and eligibility requirements to be promoted.

ARTICLE 37

DETAILS

Section 3. The Employer will provide a memorandum documenting official details to higher level classified positions of more than 10 consecutive workdays but not more than 30 calendar days, to employees, upon request. Official details in excess of 30 calendar days will be recorded on SF-52 "request for personnel action.

Section 4. Except where the employee' s immediate organization's budget would preclude such an action, an employee temporarily assigned to a classified position at a higher level for more than 30 calendar days will receive a temporary promotion as soon as practicable, but no later than the 31st day of the assignment. The employee must meet any qualification and eligibility requirements to be promoted.